No. 9564

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

TOM WING ART, alias WING FOOK TOM, alias SHORTY YUEN,

Appellant,

vs.

WILLIAM A. CARMICHAEL, District Director of U. S. Immigration and Naturalization Service, District No. 20,

Appellee.

BRIEF OF APPELLEE.

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Preliminary Statement.

This is an appeal from an order of the District Court denying appellant's petition for a writ of habeas corpus.

The certified record of the Department of Labor, No. 55983/430, has heretofore been filed with this Court and will be referred to throughout this brief as the "Immigration Record". For the sake of convenience each page of the Department record has been renumbered in red at the bottom, beginning with number 1 and ending with 328, and these page numbers will be cited when reference is made thereto.

Statement of Facts.

The appellant herein is an alien, a native and citizen of China, of the Chinese race, aged 35 years and unmarried. He was admitted into the United States at the port of San Francisco, California, on June 12, 1921, and since 1922 has resided continuously at San Diego, California.

On August 16, 1938, the alien was arrested under a warrant issued by an assistant to the Secretary of Labor directing that said alien be taken into custody and given a hearing to show cause why he should not be deported from the United States. In the hearing he was informed of the nature of the proceeding and the grounds upon which his deportation was sought. At his request the hearing was continued to afford him an opportunity to employ counsel and on August 20, 1938, he being then represented by counsel, the hearing was resumed. Hearings were then held between August 20, 1938 and March 9, 1939. Counsel for alien participated throughout said hearings, examining and cross-examining witnesses. Transcript of testimony taken in these hearings runs from page 27 to page 268 [see Immigration Record]. At the conclusion the Examining Inspector summarized the evidence [see Immigration Record pp. 269 to 278], and recommended that the alien be deported to China.

A transcript of the entire record was then forwarded to the Department in Washington, D. C., where it was considered by a Board of Review. The alien was represented before the Board by counsel [see Immigration Rec-

ord p. 3]. The Board sustained the findings of the Examining Inspector and recommended that the alien be deported to China. The Department adopted the findings and recommendation of said Board and on August 14, 1939 an assistant to the secretary, having become satisfied from the proof submitted, that the alien was subject to deportation under section 19 of the Immigration Act of February 5, 1917, in that the alien:

(1) Has been found receiving, sharing in or deriving benefit from the earnings of a prostitute;

(2) Has been found connected with the management of a house of prostitution; and

(3) Has been found managing a house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather,

issued his warrant commanding appellee to deport the said alien to China. The warrant also provided that the alien be permitted to depart without expense to the United States to any country of his choice except foreign contiguous territory. The alien refused to so depart and appellee was about to execute the warrant of deportation when the alien sued out a writ of habeas corpus. From an order dismissing the writ and remanding the alien to the custody of appellee the alien is prosecuting the present appeal.

Issues.

Nine specifications are set forth by counsel in his "Statement of Points" [Tr. p. 31]; however, it is believed that these may be summarized and restated in the following questions, which are the real issues of the case:

(1) Was there any evidence to sustain the decision of the Secretary of Labor?

(2) Was a fair hearing accorded?

The appellant also brings up the following question:

(3) Must an alien be caught in the act of receiving benefits from prostitution, etc., at time of arrest in order to be comprehended within the statute directing deportation of such classes of aliens?

Statutes.

The applicable statutory provisions are as follows:

Section 19 of the Immigration Act of February 5, 1917 (8 U. S. C. A., 155), provides in part:

> "* * * any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, * * * shall, upon the warrant of the Secretary of Labor be taken into custody and deported. * * * *In every case where any person is ordered deported from the United States under the provisions of this act, or any law or treaty, the decision of the Secretary of Labor shall be final.*" (Italics ours.)

Section 16 of the Act hereinabove mentioned (8 U. S. C. A., 152), provides:

> "* * * Said inspectors shall have the power to administer oaths, and to take and consider evidence touching the right of any alien to enter, reenter, pass through, or reside in the United States, and, where such action may be necessary, to make a written record of such evidence; * * *."

Thus, the statute makes the decision of the Secretary of Labor final, and Congress has intrusted to the political department of the government the execution of laws providing for the deportation of aliens. Congress might, if it saw fit, authorize the courts to investigate and ascertain the facts, yet Congress may intrust the final determination of those facts to an executive officer, and if this is done, his order is due process, and no other tribunal, unless expressly authorized by law to do so, will reexamine the evidence upon which he acted, or controvert its sufficiency:

Nishimura Ekiu v. U. S., 142 U. S. 651, 660;

Fong Yue Ting v. U. S., 149 U. S. 698, 713;

Lem Moon Sing v. U. S., 158 U. S. 538, 545;

Fok Yung Yo v. U. S., 185 U. S. 296, 302;

The Japanese Immigrant Case, 189 U. S. 86, 100.

It is clear, therefore, that if there is any evidence in the record that the alien herein has been found managing a house of prostitution or connected with such management, or who has been receiving, sharing in or deriving benefit from any part of the earnings of any prostitute, such alien is subject to deportation.

ARGUMENT.

1. Was There Any Evidence to Sustain the Decision of the Secretary of Labor?

Appellee submits there was ample evidence before the secretary to justify issuance of the warrant of deportation. A brief but comprehensive review of the evidence in this case will be found in the memorandum dated August 14, 1939, prepared by the Board of Review [see Immigration Record pp. 3 to 11]. Counsel accepts this memorandum and the summary prepared by the Examining Inspector [Immigration Record pp. 269-278], as a correct statement of the facts (Opening Brief p. 2). It will be found that the evidence overwhelmingly supports each of the three charges contained in the warrant of deportation. It is only necessary to sustain one to justify deportation:

Lewis v. Frick, 233 U. S. 291;

U. S. ex rel. Freeman v. Williams, 175 Fed. 274;

U. S. ex rel. Rennie v. Backus, 204 Fed. 908;

U. S. ex rel. Dimond v. Uhl, 266 Fed. 34.

The credibility of witnesses and the weight of testimony is for the immigration authorities and is not reviewable on habeas corpus proceedings. If there is evidence to sustain the charge, the decision of the Secretary of Labor as to the weight of the proof is accepted by the courts as conclusive:

Low Wah Suey v. Backus, 225 U. S. 460, 468;

Zakonaite v. Wolf, 226 U. S. 272, 275;

Tisi v. Tod, 264 U. S. 131;

Kenmotsu v. Nagle (C. C. A. 9), 44 Fed. (2d) 933 (Cert. denied, 283 U. S. 832);

Kumaki Koga v. Berkshire (C. C. A. 9), 75 Fed. (2d) 820 (Cert. denied, 295 U. S. 37).

In:

Ng Fung Ho, etc. v. White, 259 U. S. 276,

the court said, at page 284:

> "For where there is jurisdiction, a finding of *fact* by the executive department is conclusive * * * and courts have no power to interfere, unless there was either denial of a fair hearing * * * *or the finding was not supported by evidence* * * * or there was an application of an erroneous rule of law. * * *." (Italics ours.)

and in *Tisi v. Tod, supra,* at page 133, Mr. Justice Brandeis said:

> "* * * We do not discuss the evidence because the correctness of the judgment of the lower court is not to be determined by inquiring whether the conclusion drawn by the Secretary was correct or by deciding whether the evidence was such that if introduced in a court of law it would be legally sufficient to prove the fact found."

In *Kumaki Koga v. Berkshire, supra,* Circuit Judge Garrecht made the following statement concerning this rule:

> "This court said in Chin Share Ging v. Nagle, etc., 27 F. (2d) 848, 849 '* * * The conclusions of administrative officers upon issues of fact are invulnerable in the courts unless it can be said that they could not reasonably have been reached by a fair-minded man, and hence are arbitrary.' *Where the*

issues rest upon conflicting testimony the court is not at liberty to review administrative finding, unless in some other particular the conduct of the officers was such as to render the hearing unfair." (Italics ours.)

The two principal witnesses for the Government, Mrs. Lorraine Gordon and Norma Bondley Lickert, made certain statements on May 14, 1938 [See Exhibit "B", Immigration Record pp. 304-326], and it was on the basis of these statements the warrant was issued. Mrs. Gordon testified to having been employed as a prostitute in the "De Luxe Rooms" at San Diego, California in 1932 and 1933 and during her employment saw the alien call almost every night, and at regular intervals check with the "Madame", Mrs. Jean Alvarado, the amount of money earned by prostitution during the day and receive his share. She further testified the alien put her in charge of the "De Luxe Rooms" to serve as the "Madame", and she did so serve in this capacity in the alien's employment, and divided the net proceeds earned by the house with him. Miss Lickert testified that for about three months, beginning in July, 1938, she acted as "Madame" of the "Ardmore Rooms" and was informed by a woman named "Dorothy", who had employed her, that the alien was the "boss" of the establishment. She testified of her own knowledge that the alien possessed a key which fitted a lock in the rear entrance door of said Ardmore Rooms; that he called there frequently; that he used the telephone there, and that on one occasion he took the money which had been earned by the house through prostitution, as his share.

At no time during the proceedings was any contention made that the "Ardmore Rooms" and the "De Luxe Rooms" were anything but houses of prostitution; neither

was it disputed that the two witnesses, Lorraine Gordon and Norma Bondley Lickert, had been employed in these houses as prostitutes.

Both these witnesses were produced at the hearing and subjected to a searching cross-examination by counsel for alien. No flaw could be found in their testimony. They were neither biased nor prejudiced. They testified truthfully to facts within their personal knowledge.

The same cannot be said for the testimony of the prostitute witnesses Jean Alvarado and Mary T. (Georgia) Buck produced by the alien. *These were the only witnesses who testified in his behalf.* An examination of their testimony [see Immigration Record pp. 98-180], shows it was contradictory, inconsistent, evasive and vague. To illustrate, we quote a portion of the testimony. Jean Alvarado [see p. 120 Immigration Record], testified:

"Q. When was the last time you saw Rita Morgan?

* * * * * * * *

A. (hesitates) I couldn't say.

Q. Well, was it as long as a year ago?

* * * * * * * *

A. I don't remember.

Q. As long as two years ago?

* * * * * * * *

A. I don't really remember.

Q. Do you think you have seen her since you allegedly bought the De Luxe from her? (1922)

* * * * * * * *

A. (hesitates) I don't remember that.

Q. You can't remember having seen her since then?

A. No."

The Rita Morgan mentioned operated the De Luxe Rooms as a house of prostitution just prior to the proprietorship of the witness Jean Alvarado. After a short recess Jean Alvarado was recalled to the stand and testified as follows [Immigration Record p. 121]:

> "Q. I will ask you again about Rita Morgan. (Attorney Beck to witness: And you answer the question to the best of your recollection.)"

Examining inspector addressing witness:

> "Q. Have you seen her since, according to your testimony, you bought the De Luxe from her?
> A. Since I bought the De Luxe?
> Q. Yes.
> A. I believe I have, yes."

Subsequently, and in the same proceedings, she testified on this subject as follows [Immigration Record p. 131]:

> "Q. Where did you see her? (Rita Morgan.)
> "A. *I saw her the other night.* I went up to Mr. Saunders' office and the woman was sitting in there and I really didn't recognize her at first. I really didn't when I walked in there. The woman has changed a lot since I saw her and I never had one word with her, and since we went out to lunch I was thinking about it and I thought I should tell you." (Italics ours.)

Testimony of the other witness, Mary T. Buck, presented by the alien, while not so contradictory as that of Jean Alvarado, nevertheless, was sufficiently inconsistent to raise a reasonable doubt as to her veracity.

The evidence given by the two Government witnesses, Lorraine Gordon and Norma Bondley Lickert, was cor-

roborated in many particulars by the testimony of four persons not connected with the business of prostitution [see Immigration Record pp. 211-266]. To a certain extent the testimony of the two defense witnesses also corroborated that of Lorraine Gordon and Norma Bondley Lickert.

Relying mainly upon the case of:

Katz v. Commissioner, 245 Fed. 316,

counsel argues that the statute (8 U. S. C. A., 155), does not make "receiving, sharing in or deriving a benefit from the earnings of one who manages a house of prostitution or from the profits arising from the operation of such house" a deportable offense (Opening Brief p. 24), and that only inmates of houses of prostitution are deportable as aliens connected with their management.

The *Katz* case, *supra,* is not authority for such an interpretation of the statute herein involved. In that case the alien's deportation was sought on the ground that he had been found "receiving, sharing in, or deriving benefit from the earnings of a prostitute or prostitutes". The only evidence in support of the charge was that he had leased certain premises to prostitutes in which they plied their trade; and that he received rent from such prostitutes. There was no evidence that he had any relation with the prostitutes other than that of landlord and tenant; nor that he received any money from such prostitutes other than as rentals. He was not in any way connected with the management or conduct of the business of prostitution. Under such circumstances the court correctly found that the alien did not come within the meaning of the statutory provisions for the deportation of an alien who is "receiving, sharing in, or deriving benefits" from

the earnings of prostitutes. But the court *did* say that if in addition Katz was conducting or managing such a house of prostitution, it would be a reasonable inference and deduction that he was taking the earnings of an inmate. The court did not say or decide that the sixth clause in section 19 (8 U. S. C. A. 155), is limited to inmates of a house of prostitution and inmates connected with the management of such a house.

In the instant case there is no tenant-landlord relation between the prostitutes and the alien. There is conclusive evidence that he was in fact the manager and overseer of at least two houses of prostitution; that he not only managed and supervised the management of such houses but that at intervals he appeared on the premises and collected his share of the proceeds derived from prostitution. The case of:

In re Abeldano, 11 Fed. Supp., 1021,

is also relied upon by counsel to sustain his position. This case is clearly distinguishable from the case at bar. It was held in that case by the District Court at Houston, Texas, that the private relations of an alien with a prostitute are personal, not public, and are not connected with the promotion of the trade or business of prostitution as such. We believe it is clear that the legislative intent expressed in clauses 5, 6 and 7 of section 19 was to deport from the United States aliens receiving, sharing in or deriving benefit from the proceeds of prostitution, or connected with the business of prostitution or managing houses of prostitution, regardless whether they are inmates of such houses.

This is not a case of first impression. The law involved has been interpreted, applied and declared in many cases.

In:

Lindsey v. Dobra, 62 Fed. (2d) 116 (Cert. denied Feb. 13, 1933, 288 U. S. 606),

Dobra was charged with "managing a house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes or where prostitutes gather". He was not an inmate of a house of prostitution but operated a restaurant, soft drink stand and gambling place frequented by prostitutes who bought cigarettes, etc., and sometimes solicited patrons. Speaking of Dobra's place, the court said:

> "* * * The place was a place of amusement and resort primarily for men. The narrow question is whether prostitutes habitually frequented and gathered at the place for purposes connected with their business."

The court held that Dobra was subject to deportation under the statute and that he was not protected from deportation merely by the absence of his direct connection with or interest in the activities of prostitutes. See:

Kielema v. Crossman (C. C. A. 5), 103 Fed. (2d) 292;

Ranieri v. Smith (C. C. A. 7), 49 Fed. (2d) 537;

Lucchesi v. Weedin (C. C. A. 9), 61 Fed. (2d) 656;

Inouye v. Carr (C. C. A. 9), 98 Fed. (2d) 46.

The testimony as summarized in the aforementioned memorandum prepared by the Board of Review [Immigration Record pp. 3-11], points out ample competent evidence to support the secretary's decision. Two of the Government's witnesses directly identified the alien as the

one who shared in their earnings as prostitutes. The witness Lorraine Gordan gave direct evidence of alien's management of the De Luxe Rooms and substantiated her testimony with the production of a paper (Exhibit "E"), upon which the alien had figured the division of profits accruing from the operation of the house of prostitution known as the "De Luxe Rooms". She was asked [Immigration Record p. 39], if the handwriting on this paper [Exhibit "E", page 8, Immigration Record p. 289], was that of the alien:

"* * * * * * * * *

Q. Page 8?

A. Shorty Yuen's.

Q. Is he present now?

A. Yes, sir.

Q. Will you identify him?

A. The gentleman right there (points to the alien subject of these proceedings).

* * * * * * * *

Q. Page 8 is in the handwriting of Shorty Yuen. Did you see that handwriting made?

A. Yes, sir.

Q. You were present when it was made?

A. Yes, sir.

Q. By Shorty Yuen?

A. Yes, sir.

Q. And was that when you were living in the De Luxe?

A. Yes, sir."

Page 41, Immigration Record:

"Q. You stated that Shorty Yuen, the subject of these deportation proceedings, here present, prepared these figures in his own handwriting in your presence and in the presence of your husband?

A. Yes, sir.

* * * * * * * *

Q. The point I wish to cover there is did Shorty Yuen, the subject of these proceedings, make these figures while you and he were endeavoring to settle finally the accounts of the establishment known as the De Luxe?

A. Yes, sir."

Page 40, Immigration Record, referring to figures on sheets of paper on which witness had figured money which she said was divided with alien:

"Q. *And how was that incoming money derived?*

A. *Through prostitution.*

Q. Any other source?

A. No, sir." (Italics ours.)

If this witness' statements were false that the alien made the figures to which the foregoing testimony refers [Immigration Record p. 289], the alien would have certainly made an emphatic denial. *He does not deny it.* It is undisputed that the witness Lorrain Gordon practiced prostitution at the De Luxe Rooms and that this hotel was a brothel. Thus a direct connection with the management of a house of prostitution is established, as well as the fact alien received the proceeds derived from the practice of

prostitution. Concerning the extent to which it must be shown an alien is "connected" with the management of a house of prostitution, the court said in:

> *In re Psimoules* (D. C. Cal.), 222 Fed. 118 (Appeal dismissed, 224 Fed. 1022):
>
> "* * * the statute does not attempt to define the extent to which an alien must be 'connected' with such management, in order that he may be placed under the ban of the immigration law. *Giving full meaning to the terms employed it is sufficient if it be shown that such alien is 'connected' in any degree or capacity with such management.* In other words, if he assumes at all, knowingly, any of the responsibilities for the carrying on or conduct of the inhibited business, he may then be said to be 'connected' with its management." (Italics ours.)

See also:

> *United States v. Kimi Yamamoto* (C. C. A. 9), 240 Fed. 390;
>
> *United States v. Sui Joy* (C. C. A. 9), 240 Fed. 392.

We have no desire to tax the Court's indulgence by reproducing further testimony in detail. There is abundant evidence to sustain the charges on which alien's deportation is sought.

2. Was a Fair Hearing Accorded?

Respondent submits the hearing was fair in every respect.

An examination of the Immigration Record will show that the hearing was conducted in conformity with the Rules and Regulations prescribed by the Secretary of Labor and conformed with all the requirements of "due process". Rules prescribed by the Secretary of Labor pursuant to law have the full force and effect of law:

Fok Yung Yo v. U. S., 185 U. S. 296;

Chun Shee v. White (C. C. A. 9), 9 Fed. (2d) 342;

Haff v. Tom Tang Shee (C. C. A. 9), 63 Fed. (2d) 191.

The alien was fully apprised of the nature of the proceedings and his right to counsel, and he did, in fact, employ counsel. No part of the evidence upon which the warrant was issued was concealed or withheld from him or his counsel and he was not deprived of the privilege of bringing forward explanatory or rebuttal evidence. Several of the Government's witnesses were examined at great length by the alien's counsel. The alien was permitted to introduce testimony in his own behalf and was represented before the Board of Review by counsel who submitted a brief in his behalf. This was not a denial of a fair hearing.

As the hearings under the warrant were properly conducted with regard to the rights of the alien, under the rule in:

Bilokumsky v. Tod, 263 U. S. 149,

and as set forth in the case of:

In re Kosopud, 272 Fed. 330 (Citing *Low Wah Suey v. Backus,* 225 U. S. 460, 471; *Mok Nuey Tau v. White* (C. C. A. 9), 224 Fed. 743; *Guiney v. Bonham* (C. C. A. 9), 261 Fed. 582, 585; *Wolck v. Weedin* (C. C. A. 9), 50 Fed. (2d) 928, 930),

the test of a fair hearing has been met.

3. Must an Alien Be Caught in the Act of Receiving Benefits From Prostitution, Etc., at Time of Arrest in Order to Be Comprehended Within the Statute Directing Deportation of Such Classes of Aliens?

We submit it is not the sense and reason of this statute that immigration officers should be compelled to catch an alien in the actual act of being connected with the management of a house of prostitution; or in the actual act of receiving, sharing in and deriving benefit from the earnings of a prostitute in order to bring him within the statute. An interpretation of a statute which leads to such absurd consequences is improper if the statute is susceptible of another interpretation by which such consequences can be avoided:

Ex parte Ellis, 11 Cal. 222;

Ryegate v. Wardsboro, 30 Vt. 746;

Caledonian Ry. v. N. Brit. Ry., L. R., 6 App. Cas. 122.

The statute under consideration is plainly susceptible of an interpretation avoiding such harmful and nullifying consequences. Congress was aiming at the deportation of all alien panderers and prostitutes. By the use of the word "found" in this connection it meant a determination arrived at through investigation—a conclusion announced as the result of investigation upon a disputed fact or state of facts, and there was no intention to restrict the enforcement of the law to those few actually caught in the act of transacting business connected with prostitution. Such has been the construction placed on this section by the Secretary of Labor for many years. No reported judicial decision discloses that such construction has ever been questioned in the courts, and, so far as can be ascertained, no question as to the propriety of this construction was ever raised in the Department. Having been thus exercised over a long period of years, that construction of the law is entitled to great weight. That is so, especially when such executive or administrative action has never been questioned or restricted by Congress when other immigration laws were enacted by that body. See:

Constanzo v. Tillinghast, 287 U. S. 341,

particularly the following statement on page 345:

> "The failure of Congress to alter or amend the section, notwithstanding this consistent construction by the department charged with its enforcement, creates a presumption in favor of the administrative interpretation, to which we should give great weight, even if we doubted the correctness of the ruling of the Department of Labor." (Citing cases.)

All statutes must be given a reasonable construction with a view to effecting the object and purpose thereof:

Low Wah Suey v. Backus, 225 U. S. 460, 475;
The Chinese Exclusion Case, 130 U. S. 581;
U. S. v. Hung Chang, 134 Fed. 19 (C. C. A. 6);
In re Bautista, 245 Fed. 765, 772.

Counsel cites the case of:

Kessler v. Strecker, 59 S. Ct. 694,

in support of his contention, but the history of the act there construed, as well as the differences in language and facts, render this case clearly distinguishable.

The *Strecker* case, *supra,* construed the Act of October 16, 1918 (40 Stat., 1012), which relates to the exclusion and expulsion of aliens who are members of anarchistic and similar classes. The statute construed reads:

> "Sec. 2. That any alien who at any time after entering the United States, is found to have been at the time of entry or to have become thereafter, a member of any one of the classes of aliens * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported * * *."

The court, in construing that section, held that the phrase "at any time" qualifies the verb "found" and that subsequently the section does not require the exclusion and deportation of those who have been in the past but are no longer members of a prescribed organization. We do not have such a phraseology in the statute involved in the case at bar. That portion of the statute applicable in the instant case reads as follows:

> "* * * any alien who shall be found an inmate of or connected with the management of a house of

> prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of a prostitute * * *."

Thus we see that the word "found" appears but once and is used only in the first phrase of the clause quoted. As here used, the verb "found" qualifies the phrase "any alien" appearing in the first portion of the clause. It does not qualify the phrase "or who shall receive * * *", nor does it qualify any of the subsequent clauses. It is not used or intended to be used in any of the subsequent phrases or clauses. For example, the 6th clause provides for the deportation of any alien who (1) "shall be found an inmate of or", (2) "connected with the management of a house of prostitution", or (3) "practicing prostitution after such alien shall have entered the United States". The other classes of aliens are those who receive, share in or derive benefit from any part of the earnings of any prostitute.

The first important immigration act covering aliens connected with prostitution was that of March 3, 1875 (18 Stat. 477), which forbade the importation of women for purposes of prostitution and made such importation a felony. It had become obvious that of all "undesirables" who might strive to enter the country, those involved in prostitution and immorality akin to it were least worthwhile additions to the population and should be rigorously prohibited from entering or remaining here. By 1903 the practical application of this idea had been worked out in definite form, for the act passed that year (32 Stat. 828), not only called for the deportation of prostitutes and persons who procure or attempt to bring in prostitutes, but it

provided that the importation into the United States of any woman or girl for the purpose of prostitution was penalized. By 1907 (34 Stat. 898), aliens found inmates of, or connected with the management of a house of prostitution or deriving benefit from any part of such earnings were deportable, with a three year limitation. In 1910 (36 Stat. 263), the deportation provisions were extended by adding "persons who are supported by or receiving in whole or in part the proceeds of prostitution" and the three year limit was removed, thus introducing the principle of deportation of such persons at any time after entry. In *United States v. Sui Joy, supra,* at page 393, the court in construing this Act, said:

> "We think that Congress by the act has, in unlimited terms, provided that 'any alien * * * who shall receive, share in, or derive benefit from any part of the earnings of a prostitute,' etc., shall be deemed to be unlawfully within the United States and shall be deported.",

and held that any alien who, while a resident of the United States, commits the acts outlined, is deportable. The same year brought forth the "White Slave Traffic" Act (36 Stat. 825), which is still in force. It will be seen that the development of the law was marked with increasing severity. The present provisions relating to the deportation of prostitutes and persons connected with prostitution are founded on a basic immigration act of 1917, the Act of February 5, 1917 (39 Stat. 875), which was the first in importance after 1910. Under this act, without excep-

tions, aliens found connected with the management of a house of prostitution or receiving any share in the earnings of prostitutes are deportable. Congress, in passing this act, clearly intended it to provide for the deportation of this class of persons without requiring their detection in the actual act defined and such intent is plainly reflected in the provisions of the 1917 Act. It certainly was not considered at any time that such patently undesirable aliens could escape deportation if they were not caught redhanded in the actual act of managing a house of prostitution, etc.

Thus we see it has been the policy of Congress to rid this country of alien panderers and prostitutes; and, the meaning of the statute has been construed to meet cases which are clearly within the spirit and reason of the law and the evil which it was designed to remedy. Where the sense is doubtful the court should lean to that sense which is most agreeable to the spirit and reason of the law:

Gibbons v. Ogden, 22 U. S. 1, 83.

However, even if the argument advanced by counsel for construction of the word "found" is sound (conceding this solely for the purpose of argument), it has been previously pointed out the latter part of clause 6 reads: "* * * or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute * * *", so that those aliens who receive, share in, or derive benefit from the earnings of any prostitute, do not have to be "found", or, as counsel contends, actually caught in the act of receiving proceeds from the earnings of prostitution, in order

to become subject to deportation. It follows, therefore, that even if it is found by this Court that the alien is not subject to deportation on the ground he is managing or connected with the management of a bawdyhouse for the reason he was not caught redhanded; he will still be subject to deportation on the ground he is receiving, sharing in and deriving benefit from the earnings of a prostitute. The various deportable classes outlined in clause 6 are connected by the word "or", indicating a choice of either. In this sense, that portion of the statute calling for the deportation of aliens receiving benefit from the proceeds of prostitution reads as follows:

> "* * * any alien * * * who shall receive, share in, or derive benefit from any part of the earnings of any prostitute * * * shall upon the warrant of the Secretary of Labor, be taken into custody and deported."

Counsel has failed to cite a single case, and we have been unable to find any, which support his contention. On the other hand, the courts have consistently construed this statute to support the Government's contention. In the case of:

> *United States v. Reimer* (C. C. A. 2), 103 Fed. (2d) 435),

the alien had been ordered deported on May 15, 1935, as one found assisting a prostitute. The only evidence sustaining that charge was an occurrence in 1929, at which time the alien had been convicted on a charge of receiving women into a room "for the purpose of prostitution—lewdness—assignation", and for knowingly permitting them to

remain there for said purpose. The court held that the conviction of the alien and the woman in 1929 was sufficient to support the warrant of deportation on the ground that the alien had been found assisting a prostitute. The court said:

> "It is doubtless the law that the words in section 19 of the 1917 Act, 'assists any prostitute', broad as they are, are restricted in their sense to conscious assistance of a prostitute in pursuit of her unlawful business. Mita v. Bonham, 9 Cir., 25 F. 2d 11; Marino v. Zurbrick, D. C., 52 F. 2d 160. But there was enough in the record for the Secretary to find that the appellant had knowingly rendered that sort of assistance to a prostitute. It is hardly necessary to say again that findings of fact by the Secretary of Labor in a deportation case are not subject to review by the courts if there was substantial evidence before the Secretary to support the findings. Costanzo v. Tillinghast, 287 U. S. 341, 53 S. Ct. 152, 77 L. Ed. 350; United States ex rel. Di Tomasso v. Martineau, 2 Cir., 97 F. 2d 503."

Furthermore, it was not urged at the hearing that the alien was not, at the time the warrant of arrest was issued, connected with the management of a house of prostitution or sharing in the proceeds of prostitution, or that he had never been so connected with such activities. The alien's defense was a general denial of all charges contained in the warrant of arrest. Notwithstanding the alien's denial, the evidence is conclusive that he was so connected and that he was sharing in and deriving benefit from the proceeds of prostitution. The alien has not produced any evidence that he has ever changed his conduct or association with houses of prostitution.

Conclusion.

There being no evidence that the hearing in this case is unfair appellee believes that the facts and law compel the deportation of appellant under the charges set forth in the warrant of deportation and therefore respectfully urges that the decision of the court below should be affirmed.

Respectfully submitted,

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By Russell K. Lambeau,
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